IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

C.W.P. No. 13082 of 2006
DATE OF DECISION : 8-9-2006

The Brass Co-op. Agricultural
Service Society Limited … PETITIONER.

Presiding Officer and another. … RESPONDENTS

CORAM:- HON'BLE MR. JUSTICE J.S.NARANG
HON'BLE MR. JUSTICE ARVIND KUMAR

Present: Ms. Monika Jalota, Advocate,
for the petitioner.

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ARVIND KUMAR, J:

Petitioner has invoked the extraordinary jurisdiction of this Court under Articles 226/227 of the Constitution of India, seeking a writ in the nature of Certiorari for quashing order dated 18.1.2006, Annexure P-1, allowing the application of respondent No.2-workman filed under Section 33-C(2) of the Industrial Disputes Act,1947 (hereinafter referred to as the Act).

In the writ petition, petitioner,namely, The Brass Co-operative Agricultural Service Society Limited, Fatehgarh Sahib (hereinafter referred to as the management) has averred that on 1.10.1978, it appointed Didar Singh, respondent No.2-workman as Cashier-cum-Salesman and later promoted him as Secretary. It is alleged that on 20.12.1994, on account of embezzlement, he was placed under suspension and charge-sheeted accordingly. Later, during the enquiry, the management vide resolution dated 17.3.1997 reinstated the workman in

service but the Deputy Registrar, Co-operative Societies, Fatehgarh Sahib, vide order dated 29.7.1997 rejected the said resolution. However, the management again passed resolution dated 25.10.1997 to the same effect but once again the Deputy Registrar rejected it vide his order dated 24.12.1997. The workman is alleged to have marked his presence in the attendance register from 25.10.1997 to 31.12.1997 though he did not work for the said period and further alleged to have fraudulently procured the afore-stated two resolutions. Finally, on 12.3.1999, the management terminated the services of the respondent No.2-workman. The workman then filed an application under Section 33-C(2) of the Act claiming salary for the period prior to his suspension i.e. from 1.9.1994 to 19.12.1994 besides claiming pay and annual increments for the period from 20.12.1994 to 31.8.1998. In this way, the workman claimed an amount of Rs.2,31,972/- along with interest from the management. Upon notice of the said application, the management filed written statement denying the claim of the workman. The learned Labour Court vide the impugned order allowed the afore-stated application and directed the petitioner-management to pay to the workman compensation of Rs.76549/-, i.e. Rs.8123/- towards salary for the period from October 1994 to December 19, 1994 and Rs.68,426/- as 50 per cent of the salary payable during the period of suspension. It, however, declined to accept the prayer of the workman for grant of full wages on account of non-conclusion of enquiry within six months. It is this order which has been challenged by the management by way of present writ petition.

We have heard the learned counsel for the petitioner.

A proceeding under Section 33-C (2) of the Act is a proceeding, generally, in the nature of an execution proceeding wherein the Labour Court calculates the amount of money due to a workman from his employer, or if the workman is entitled to any benefit which is capable of being computed in terms of money, the Labour Court proceeds to compute the benefit in terms of money. This calculation or computation follows upon an existing right to the money or benefit in view of its being previously adjudged, or otherwise, duly provided for. In the instant case, a bare perusal of the award shows that respondent-workman was denied wages for the month of September,1994, on the basis of receipt(Exhibit M-7), Mark'A'

regarding receipt of salary for that month, which was not denied by the respondent-workman and thus, allowed wages only for the period from October 1994 to December 19, 1994 as the petitioner-department had neither led any evidence nor proved having paid the salary for the said period.

Coming to the claim of the respondent-workman for subsistence allowance, there is no dispute that he remained under suspension from 20.12.1994 to 31.8.1998. There is also no dispute that the respondent-workman is governed by the Punjab State Cooperative Agricultural Services Society Service Rules, 1997. Rule 13.4 thereof stipulates payment of 50 per cent salary during the period of suspension. It is otherwise a settled law that the salary is not paid during suspension period, it is the subsistence allowance which is paid according to law. In backdrop of this situation, the learned Labour Court has rightly calculated subsistence allowance of Rs.68426/- payable to the respondent-workman.

In view of the discussion above, there is no infirmity in the order passed by the learned Labour Court allowing the application of the respondent-workman and accordingly, the same calls for no interference. The writ petition is dismissed in limine.

(ARVIND KUMAR)
JUDGE

September 8, 2006
JS

(J.S. NARANG)
JUDGE